

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEWAZINGA CORPORATION,	Plaintiff,	X
		:
		20 Civ. 1106 (LGS)
		:
-against-	:	<u>ORDER</u>
		:
GOOGLE LLC,	Defendant,	:
		:

LORNA G. SCHOFIELD, District Judge:

WHEREAS, on November 7, 2024, Plaintiff Kewazinga Corporation filed a letter explaining its objections to the proposed demonstrative aids that Defendant Google LLC intends to use in its opening statement. (Dkt. 627). It is hereby

ORDERED that Plaintiff's objections are resolved as follows:

1. References to the Delaware Action and Its Dismissal and Plaintiff's Delay in Filing Suit (DDX-21 through DDX-26; DDX-30; DDX-31)

a. The objection is **OVERRULED** in part as follows: If Plaintiff references the Delaware action to show that Defendant knew of the '325 patent, then the parties may introduce testimony (but no documents) about the Delaware action only to the following extent -- that, Plaintiff took steps to sue Defendant about infringement of the '325 patent; at the time Defendant disputed that it had infringed the '325 patent; Plaintiff did not complete all the steps to initiate the lawsuit and did not pursue it. Any evidence and argument shall be at this general level so as not to confuse the jury with procedural and technical matters such as non-service of the Complaint, Defendant's motion to dismiss, Plaintiff's non-opposition, **dismissal**, dismissal without prejudice, Defendant's document

holds and the like. The parties are invited to prepare a stipulation as to what may be referenced and how.

b. If Plaintiff references the Delaware action, Defendant may reference the period between the Delaware action and this action. Contrary to Plaintiff's argument, in the equitable estoppel opinion, the Court held that the evidence did not support a finding that Plaintiff had engaged in misleading conduct as necessary for the equitable estoppel defense, but did not make any factual finding binding on the jury.

2. Legal Standards and Lack of Foundation (DDX-40, DDX-12, DDX-42)

a. K-System Slides: The objection is **OVERRULED** as to Slide 12, which merely states the existence of the K-System and shows the product. The objection is **SUSTAINED** as to the pictures of the K-System included on Slide 42, which may mislead and confuse the jury by suggesting that the K-System is the sole possible embodiment of the claims.

b. Written Description: The objection is **OVERRULED** as moot given's Defendant's statement that Slide 40 will conform to the Court's revised instruction.

3. Irrelevant and Unduly Prejudicial Provisions (DDX-2, DDX-9, DDX-27, DDX-34)

a. DDX-2: The objection is **OVERRULED** because the fact that Defendant has opened a headquarters in New York City is not unduly prejudicial.

b. DDX-9: The objection is **OVERRULED** because the fact of the patent's expiration date is not unduly prejudicial. Plaintiff may propose a final instruction regarding the relevance of a patent's expiration.

- c. DDX-27: The objection is **OVERRULED** because Plaintiff has not demonstrated the slide is prejudicial.
- d. DDX-34: The objection regarding the title of the slides is **SUSTAINED** due to the reference to the jury's personal experiences, which are irrelevant.

4. Non-Admitted Exhibit (DDX-15)

- a. The objection is **SUSTAINED** for the reasons stated by Kewazinga in its explanation of objections at Dkt. 627. For clarity, PX 23 is neither pre-admitted nor excluded at this time. Defendant shall raise the admissibility of the exhibit with the Court (at the available times previously stated) before attempting to offer it.

5. Plaintiff's Delay in Filing Suit (DDX-30, DDX-31)

- a. The objection is **SUSTAINED** due to the Court's prior rulings precluding the equitable estoppel argument and holding that Defendant's own understanding of Plaintiff's intentions was inconsistent with this argument.

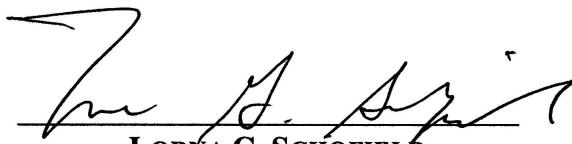
6. No Foundation (DDX-19)

- a. The objection is **OVERRULED** because Defendant may show that its approach did not change despite outreach from Plaintiff.

7. Argumentative Titles (DDX-36, DDX-37)

- a. The objection is **OVERRULED** as the slide titles are not overly argumentative and are supported by the accompanying visuals.

Dated: November 8, 2024
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE